



CHAIRMAN

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UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

OLC #78-0487/E

May 12, 1978

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Honorable James T. McIntyre, Jr.
Director
Office of Management and Budget
Washington, D. C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. McIntyre:

This is in response to your request for the views of the Civil Service Commission on the Central Intelligence Agency's (hereafter CIA) report on the civil service reform bill, S.2640 and H.R. 11280, in which it requests exemption from additional sections of the bill for itself and other entities of the intelligence community. Members of the Commission's Office of General Counsel have met with members of the Office of General Counsel of the CIA. During the course of these discussions it was stated that it was the Commission's intention to exclude the CIA from the provisions of the reform bill relating to the Senior Executive Service and application of the merit principles because of the nature of the intelligence agencies. Accordingly, CIA and other intelligence entities are exempt from proposed section 2301 (section 101(a) of the reform bill which would amend title 5, United States Code by adding a new chapter, the merit system principles). However, CIA is not exempt from the other two sections of the chapter. The CIA contends that exemption from all of Title I of the bill is necessary to establish an exemption from the provisions referring to the Special Counsel in Title II. The Commission has no objection to this and we believe that most of the concerns of the CIA may be alleviated by substituting the word "chapter" for the word "section" in the excepting language of proposed section 2301 of the bill.

To the best of our recollection, during the aforementioned discussion there was no mention of the matter of the CIA's exemption from the portions of the bill pertaining to merit pay and adverse actions involving preference eligibles. The proposed new Chapter 54 of title 5, United States Code, addresses the coverage of the Merit Pay System in section 5402 which states in pertinent part: "a merit pay system... shall cover any employee in a position which regularly requires the exercise of managerial or supervisory responsibilities and which is in GS-13 through GS-15." (Emphasis added.) It is the Commission's view

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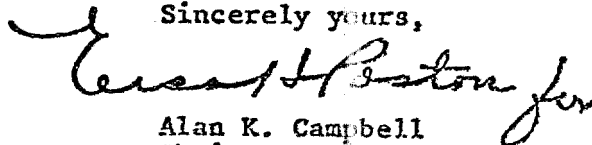
that to the extent that agencies in all three branches of the Government have employees in grades 13 to 15 subject to the classification provisions of title 5, United States Code, such agencies would be subject to the merit pay provisions. On the other hand, if the CIA positions are merely equivalent to the General Schedule positions, it is our view that CIA is currently exempt from the portions of the bill pertaining to merit pay.

In Title II, the CIA is exempted from Chapter 43, Performance Appraisal, and from Subchapter I of Chapter 75 relating to short-term suspensions (by sections 203(a) and 204(a) of the reform bill respectively). CIA, however, has not been exempted from Subchapter II, Removal or Suspension for more than 30 days (proposed sections 7511-7514 of title 5, U.S.C.) affecting preference eligibles in Executive agencies in the excepted service. CIA contends that these provisions would conflict with its statutory excepted status. Currently, the CIA has statutory authority in 50 U.S.C. § 403(c) to remove employees which does not give employees an appeal right to the Commission. Accordingly, the Commission's Federal Employee Appeals Authority currently does not accept appeals from such employees.

The Commission has no objection to, and would concur in, changes to the bill which clearly reflect the provisions of the bill from which CIA and other intelligence agencies should be exempt on the basis of security reasons. Members of the Commission's Office of General Counsel will be happy to meet with staff members of both CIA and OMB to work out modified language to conform to the Administration's position at any time, including the time of the bill's markup in Committee.

By direction of the Commission:

Sincerely yours,



Alan K. Campbell
Chairman